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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 4 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MITRA MAHESH SHANTILAL ARYA

Versus

STATE OF GUJARAT

Appearance:

Ms. S.M. Ahuja for MR MB AHUJA for Petitioner

Mr. S.S. Patel, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 09/08/2000

ORAL JUDGEMENT

Rule. Learned A.P.P. Mr. S.S. Patel waives service of rule. In the facts and circumstances of the case, the petition is taken up for final hearing.

1. The petitioner has challenged the legality, propriety and validity of order passed by the learned

Addl. Sessions Judge, City Sessions Court, Court no.10, Ahmedabad dated 23rd August, 1999 in the proceedings of Sessions Case no.255/95.

That vide impugned order, the learned Addl. Sessions Judge has directed to provide copies of police papers to the present petitioner in respect to further investigation carried out by CID, Crime Branch, Ahmedabad Zone submitted on 12-1-1998 and had also issued notice to accused no.1 to show cause why report submitted by CID Crime Branch be not accepted and was made returnable on 8-9-1999.

2. That on 15-4-1995 one Shantaben wd/o. Amthabhai Manilal residing Opposite Ottam Pole, Nagoriwad, Ahmedabad gave First Information report to Shahpur Police Station against the present petitioner-Mitra Mahesh Shantilal Arya, Gopalbhai Shantibhai, Rajesh Shantibhai and Ushaben Arvindbhai alleging that the accused have been treating deceased Mayaben with cruelty on account of which deceased Mayaben has committed suicide. That informant Shantaben is the mother of deceased Mayaben. The marriage of deceased Mayaben with present petitioner was solemnized prior to about 11 years of the date of said incident (15-4-1995). That out of the said wedlock deceased Mayaben had given birth to three children. That when she was residing at matrimonial home, the present petitioner as well as his brother Gopal and Rajesh alongwith one Ushaben were treating daughter of the informant said Mayaben with cruelty. That Mayaben having been tired of cruel treatment requested the present petitioner-her husband to stay separately. However, on intervention of social workers there was a compromise and she continued to stay in the joint family. It is further alleged that despite compromise cruel treatment was being meted out to her daughter Mayaben. As a result, on the fateful day of 15th April, 1995 between 10.30 a.m. and 11.00 a.m. Mayaben poured kerosene and ablazed herself. The informant Shantaben was informed by one Pramodbhai Shakarabhai in respect to the incident of death of Mayaben by burn injuries, and thereby, she had given complaint against the petitioner and three others as stated hereinabove.

The Shahpur Police investigated the offence against the petitioner and filed the charge-sheet in the Court of Metropolitan Magistrate who committed the case as a Sessions Case which was registered as Sessions Case no.255/95 in the Court of City Sessions Judge at Ahmedabad.

Pending the proceedings of said Sessions Case against the petitioner, the present petitioner filed a private complaint being Criminal Case no.5/97 in the Court of Metropolitan Magistrate, Ahmedabad, Court no.18 against one Police Sub Inspector Mr. P.S. Chavda and one Asstt. Police Commissioner Mr. G.S. Ahuja alleging offence made punishable under Secs.306, 354, 509 and 500 read with Sec.114 and/or 120B of the Indian Penal Code. The petitioner alleged in the said complaint that his wife Mayaben came into touch with accused no.1 PSI Shri Chavda and PSI had taken advantage of said acquaintance and had developed intimacy with Mayaben. Several allegations were made against the accused. That on account of their harassment, Mayaben had committed suicide. That learned Metropolitan Magistrate, Court no.18, Ahmedabad vide order dated 1-1-1997 rejected the complaint under Section 203 of the Criminal Procedure Code. That the present petitioner preferred Criminal Revision Application no.124/97 against the said order and this Court (Coram: N.N. Mathur, J.) vide order dated 22-4-1997 allowed the Revision Application and CID Crime Branch, State of Gujarat was directed to further investigate proceedings of CR no.59/1995 of Shahpur Police Station, Ahmedabad, keeping in view the discussion made in the order and stayed the further proceedings of Sessions Case pending in the Court of Addl. Sessions Judge against the petitioner. That CID Crime Branch, State of Gujarat, investigated the matter further and submitted the report on 13-1-1998 in the Court of City Sessions Judge, Ahmedabad. That learned Incharge Sessions Judge, City Civil and Sessions Court vide his letter no.Criminal II 166/98 dated 28th January,1998 intimated this Court through Registrar that such a report has been submitted by CID Crime. That the Registrar placed the matter before me (Coram: A.K.Trivedi,J.) and vide my order dated 5-3-1998, directed the Addl. Sessions Judge, City Civil & Sessions Court to take into consideration the report filed by CID, State of Gujarat alongwith charge-sheet forwarded by Shahpur Police Station, Ahmedabad in CR no.59/95 and further directed to proceed further with the trial in accordance with law. The stay granted vide earlier order dated 22-4-1997 was also ordered to be vacated. The copy of the said order was also directed to be send forthwith to the learned Incharge Principal Judge, City Civil & Sessions Court, Ahmedabad.

In view of the above stated order of this Court, the report was placed in the matter of Sessions Case no.255/95 and present petitioner as accused of the said case made application dated 3-9-1998 vide Exh.12

contending that copies of the police report filed by CID, State of Gujarat be supplied to him.

It would be pertinent to note that in the said application, the present petitioner as accused has only prayed for a copy of the report filed by CID Crime after further investigation and has prayed to stay the trial till further orders. That on the said application, learned Addl. Sessions Judge, Ahmedabad, Court no.10, passed the above stated order which is challenged by the petitioner in the present petition.

Ms. Ahuja appearing for the petitioner has urged that as per the procedure prescribed under the Code of Civil Procedure, after the investigation, the Investigating Agency shall produce report under Sec.173 of the Cr.P.C. before the trial Court. As such, in the instant case also, CID Crime ought to have placed report of further investigation before the Court of learned Metropolitan Magistrate, Court no.10, Ahmedabad. However, instead of submitting the report before the Court of Metropolitan Magistrate, the report has been directly placed in the proceedings of Sessions Case whereby the present petitioner is deprived of an opportunity to prefer a Revision Application, if any, against the order passed by the learned Metropolitan Magistrate of taking cognizance or not on the report of the Investigating Agency.

The submission could hardly be merited acceptance, in the facts and circumstances of the case. The CID Crime, State of Gujarat was directed by this Court vide order dated 22-4-1997 passed in the proceedings of Criminal Revision Application no.124/1997 to further investigate the matter in connection with CR no.59/95 registered at Shahpur Police Station, and as such,further investigation was directed pending proceedings of Sessions Case no.255/95. By further order dated 5-3-1998, this Court directed to submit the report in the proceedings of Sessions Case and as the case was pending since long, the Incharge, Pricipal Judge was directed to proceed further with the case in accordance with law.

Under the circumstances, the report which was the outcome of a further investigation made under the direction of order of the High Court cannot be equated with the report of Investigating Agency after taking complaint of a party and making of a report on completion of investigation. In that view of the matter, there is no question of presenting the said report before the

learned Metropolitan Magistrate, Court no.10, Ahmedabad. Furthermore, the report was directed to be taken on record of Sessions Case no.255/95 by order of this Court dated 5-3-1998, and therefore, if at all, the petitioner is aggrieved, the petitioner can prefer appeal, revision or available remedy against the same in a higher forum and cannot request the learned Addl. Sessions Judge to send back the report to the Court of the learned Metropolitan Magistrate so that petitioner may have one chance to prefer the Revision Application.

In the result, the order passed by the learned Addl. Sessions Judge dated 23rd August, 1999 in the proceedings of Sessions Case no.255/95 being eminently just, proper and reasonable, no interference of this Court is warranted, and as such, the Revision fails and stands disposed of as rejected.

(A.K.Trivedi,J.)

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